

Special Issue on  
**Women Empowerment in India**

**Opportunities and Challenges**

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## WOMEN EMPOWERMENT VERSUS GANG RAPE IN INDIA: AN ANALYTICAL STUDY

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On the land where women have been respected, depicted and worshipped in numerous forms of Goddess like Maa Parvati, Maa Saraswati, Maa Durga, Maa Laxmi etc., the concept of women empowerment was felt to bring because of their adverse conditions and deterioration in social values. Today, they are bound to face and suffer various types of humiliations not only from men rather from women also, not only in personal life rather in public life also and thus it feels that they have come on this earth to be suppressed, oppressed and offended. Such types of wrongs are a big stumbling block on the path of women empowerment and a black patch on the face of modern civilized society where one organ of the humanity is not allowed to live freely with dignity. This paper attempts to unearth in detail the legal provisions relating to gang rape under the Indian laws in the light of concept of women empowerment.

**Key Words:** Women, Offences against Women, Gang Rape, Empowerment.

*In our tradition bound society, structured on the basis of conservative values, when a woman is subjected to sexual assault in any form, it translates into a multiple crime. She is raped at home (literally and figuratively) and in public, followed by demeaning medical examination, examination and cross-examination by the police and in court, in salacious media reports, and in the insensitive response of society, including family and acquaintances. In sum, the victim suffers intermittent rape in full public glare.*

*-Justice J.S. Verma Committee <sup>1</sup>*

### INTRODUCTION

In ancient India, the women had glorious past where they could develop spiritually, socially, economically, educationally and culturally without any hindrance but latter their situation deteriorated and in modern era varieties of wrongs and offences are committed against them which put question mark on their existence and survival. Though it is expected that for

smooth running of humanity both the pillars, men and women, should be strong and stout but the reality is wholly different and women-the second pillar of humanity- are humiliated and offended in numerous ways. Among other offences against women, the offence of gang rape is not offence against an individual rather it is offence against humanity and it is a great stumbling block on the path of women empowerment. Women empowerment is

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1. Report of the Committee on Amendments to Criminal Law, January, 2013, Government of India at 14



a multidimensional and multifaceted process which challenges traditional power equations and relations. It involves many aspects such as right against gender discrimination, right against harassment, right to privacy and dignified life, social equality and security. In true sense, the women empowerment may come into effect when women will be provided equality in power sharing and active participation in decision-making in free of fear environment like their counterpart. The present paper attempts to unearth in detail the legal provisions relating to gang rape under the Indian laws in the light of concept of women empowerment.

## CONCEPT OF GANG RAPE

As the term 'gang rape' is combination of 'gang' and 'rape', it is prudent to see the meaning of these both terms. The term 'gang', in general term, means combining of more than one person for illegal activities. Oxford English Dictionary defines this term as 'an organized group especially of criminals'.<sup>2</sup> Further, the term 'rape' is thought to be originated from Latin term 'rapere' which means 'to snatch, to grab, to carry off'. In present scenario, this term is used for forcible unlawful sexual intercourse with a woman without her free consent. Section 375 of the Indian Penal Code, 1860 (IPC) defines the term rape which has been substituted by the Criminal Law (Amendment) Act, 2013<sup>3</sup> as under: 375. Rape.- A man is said to commit "rape" if he—(a) penetrates his penis, to any extent, into the vagina, mouth urethra or anus of a woman or makes her to do so with him or any other person; or (b) inserts, to any extent, any object or a part

of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or (c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or (d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person, under the circumstances falling under any of the following seven descriptions— First — Against her will. Secondly— Without her consent. Thirdly — With her consent when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt. Fourthly.— With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married. Fifthly.— With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent. Sixthly— With or without her consent, when she is under sixteen years of age. Seventhly.— When she is unable to communicate consent. Explanation 1.—For the purposes of this section, "vagina" shall also include labia majora. Explanation 2.—Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication,

2. Oxford English Mini Dictionary. 7<sup>th</sup> Edition, 2007, Oxford University Press Edited by Catherine Soanes at 231

3. Act 13 of 2013 with effect from 03.02.2013



communicates willingness to participate in the specific sexual act: Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity. Exception 1.—A medical procedure or intervention shall not constitute rape. Exception 2.—Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape. It is clear from the above that the definition of rape has been made much more exhaustive and extremely wide and the earlier definitions of rape, interpreted by judiciary will not be more useful. Patna High Court in *Musa Ansari v. State of Bihar*<sup>4</sup>, observed that penile penetration is, in the light of the amended definition of rape, no longer the only means of committing rape as embodied in Section 375 of the Indian Penal Code. The expression 'gang rape' is defined in section 376D<sup>5</sup> IPC which provides that where a woman is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape.

Thus, where the offence of rape is being committed, in presence of more than one person in furtherance of their common intention, it is called gang rape.

## **Women Empowerment and Gang Rape in India**

In India, the women have been given equal status like men in every sphere of

life—personal and public. Not only this, the State has been empowered to make special laws for them under the Supreme Law of the land i.e. Constitution of India. By enacting various laws, the women have been allowed to enjoy the real taste of participatory democracy but at the same time the practical aspects of these protections cannot be termed as satisfactory. Despite having these protective safeguards, they are bound to face countless humiliations, wrongs and offences though it is true that such type of humiliations are not being committed only in India rather in the whole world at different time but with same experiences, feelings and consequences.

In India, the case of gang rape which took place in a moving public bus of a 23-year-old woman in Delhi on December 16, 2012 attracted the attention of international community and thereafter Delhi was characterized as city of offences against women etc. In fact, if such offences are committed, bad names will associate.

As per the Crime in India, 2014<sup>6</sup>, issued by the National Crime Records Bureau (NCRB), the total number of rape incidents took place in India is 36735 which is only 1.3% of the total IPC crimes and during this period the State of Madhya Pradesh reported the highest number of rape cases i.e. 13.8% (5,076 out of 36,735 cases) of total rape cases reported in India. Earlier, the NCRB never issued data on gang rape separately rather it was combined in the single head 'rape' but from the year 2014, it has started to provide separate data on

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4. Criminal Appeal (SJ) No. 308 of 2013 decided on 6 October, 2015

5. The Criminal Law (Amendment) Act, 2013

6. National Crime Records Bureau, Ministry of Home Affairs, Government of India

gang rape. For the purpose of analysis of data on gang rape, the present study has included the incidents of gang rape in custody, where the victim was in custody, and incidents of gang rape which did not take place in custody.

The highest number of gang rape in States took place in Uttar Pradesh (573), followed by Rajasthan (414), Madhya Pradesh (284) and Haryana (230).

In Union Territories, Delhi reported the highest number of cases of gang rape i.e. 147 which is followed by Andaman & Nicobar Islands and Puducherry with only 1 case in both Union Territories and thus the total numbers of gang rape cases in Union Territories were 149.

Table-I indicates the total number of incidents of gang rape in the year 2014. It is clear from the below data that 299 re-

Table-I			
	Custodial Gang Rape	Gang Rape other than Custodial	Total
Cases pending investigation from previous year	0	211	211
Cases Reported during the year	7	2346	2353
Total Cases for investigation	7	2551	2558
Cases ended as final report false	1	298	299

Table-II			
	Custodial Gang Rape	Gang Rape other than Custodial	Total
Cases Pending Trial from the Previous Year	1	1120	1121
Cases Sent for Trial in 2014	5	1524	1529
Cases Compounded or Withdrawn	0	4	4
Cases in which Trials were Completed	1	352	353
Cases Convicted	1	128	129
Cases Acquitted or Discharged	0	224	224
Cases pending trial at the end of the year	5	2288	2293

ported cases were false which is significant number from the aspect of criminal justice system. It should be taken into account that the rape causes the greatest distress and humiliation to the victim but at the same time a false allegation of rape can cause equal distress, humiliation and damage to the accused as well.<sup>7</sup>

Table-II provides the data regarding dis-

posal of cases of gang rape by the courts where it indicates that only in 353 cases against 2650 cases (1121+1529) trials were completed which indicates the requirement of reviewing criminal justice system specially for sexual offences. In cases of gang rape, generally the accused attempt to threaten the rape victims and their family members to withdraw the case or change their statements during

7. Raju v. State of Madhya Pradesh, (2008) 15 SCC 133



trials and thus there are more chances, if not accepted by victims, of being harassed, murdered etc. for rape victims.

As mentioned above, by the Criminal Law (Amendment) Act, 2013, section 376D IPC has been substituted as under-

**376D. Gang Rape.-** Where a woman is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to life which shall mean imprisonment for the remainder of that person's natural life, and with fine:

Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:

Provided further that any fine imposed under this section shall be paid to the victim.

Section 376D IPC provides the punishment for gang rape as rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to life which shall mean imprisonment for the remainder of that person's natural life, and with fine. But, such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim. It is worthwhile to mention here that any fine imposed under section 376D IPC shall be paid to the victim.

Before 2013 amendment, the legal provisions relating to gang rape were contained in section 376 (2) (g) IPC which mentioned that whoever commits gang

rape, shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may be for life and shall also be liable to fine. Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment of either description for a term of less than ten years. Explanation 1 attached with this sub-section provided that where a woman is raped by one or more in a group of persons acting in furtherance of their common intention, each of the persons shall be deemed to have committed gang rape within the meaning of this sub-section.

Thus, it is clear from the above discussion that by 2013 amendment, the amount of punishment has been increased. The offence under section 376D IPC is cognizable, non-bailable and triable by the Court of Session.

Where an accused is found guilty in gang rape who was already convicted in any early case of gang rape, the amount of punishment will be increased as mentioned in section 376E IPC as under-

**376E. Punishment for repeat offenders.-** Whoever has been previously convicted of an offence punishable under section 376 or section 376A or section 376D and is subsequently convicted of an offence punishable under any of the said sections shall be punished with imprisonment for life which shall mean imprisonment for the remainder of that person's natural life, or with death.'

The offence under section 376E IPC is cognizable, non-bailable and triable by the Court of Session.





## Gang Rape: Procedure & Evidence

When the offence of gang rape is committed or attempted to commit and the woman, against whom the offence has been committed, gives information to the Officer-in-Charge of the concerned Police Station such information shall be recorded by a woman police officer or any woman officer.<sup>8</sup> But, where the gang rape is alleged to have been committed or attempted against a person who is temporarily or permanently mentally or physically disabled, then such information shall be recorded by a police officer, at the residence of the person seeking to report such offence or at a convenient place of such person's choice, in the presence of an interpreter or a special educator and the recording of such information shall be videographed. Further, the police officer shall get the statement of the person recorded by a Judicial Magistrate under section 164 (5A) (a) as soon as possible.<sup>9</sup>

The statement of a woman against whom an offence of gang rape is alleged to have been committed or attempted shall be recorded by a woman police officer or any woman officer.<sup>10</sup>

It is significant to mention here that if in gang rape, a public servant is involved, there will not be any requirement of sanction under section 197 of CrPC from the government to initiate legal proceed-

ings.<sup>11</sup> Further, in case of gang rape, it is mandated to complete the inquiry or trial, as far as possible, within a period of two months from the date of filing of the charge sheet.<sup>12</sup>

In a prosecution for committing or attempt to commit gang rape, where the question of consent is in issue, evidence of the character of the victim or of such person's previous sexual experience with any person shall not be relevant on the issue of such consent or the quality of consent.<sup>13</sup> In addition to this, in a prosecution committing or attempt to commit gang rape, where the question of consent is an issue, it shall not be permissible to adduce evidence or to put questions in the cross examination of the victim as to the general immoral character, or previous sexual experience, of such victim with any person for proving such consent or the quality of consent.<sup>14</sup>

## Compensation to Gang Rape Victims-

Section 357A of CrPC, inserted by the Code of Criminal Procedure (Amendment) Act, 2008 which came into force on 31st December, 2009, provides compensation to be paid by the concerned State government. As the State has failed in protecting serious violation of a victim's fundamental right, the State is duty bound to provide compensation, which may help in the victim's rehabilitation. The humiliation or the reputation that is snuffed out

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8. First Proviso of section 154 of the Code of Criminal Procedure, 1973

9. Second Proviso of section 154 of the Code of Criminal Procedure, 1973

10. Proviso of section 161 of the Code of Criminal Procedure, 1973

11. Explanation attached with section 197 of the Code of Criminal Procedure, 1973

12. Proviso of section 309 (1) of the Code of Criminal Procedure, 1973

13. Section 53A of the Indian Evidence Act, 1872

14. Proviso of Section 146 of the Indian Evidence Act, 1872

cannot be recompensed but then monetary compensation will at least provide some solace. Nevertheless, the obligation of the State does not extinguish on payment of compensation, rehabilitation of victim is also of paramount importance. The mental trauma that the victim suffers due to the commission of such heinous crime, rehabilitation becomes a must in each and every case.<sup>15</sup>

In exercise of the powers conferred by section 357A of CrPC the States have framed Victim Compensation Schemes for providing funds for the purpose of

compensation to the victims or their dependents as a result of crime and who require rehabilitation. But, it is matter of sorrow that the different States have different norms of compensation and different list of offences included in the list for providing compensation. Some relevant examples related to compensation for rape victims are as under-It is also pertinent to mention here that all the above mentioned States, in their schemes, have not mentioned the term 'gang rape'. This term may be found only in the schemes of Assam, Delhi and Madhya Pradesh having amount of compensation of Rs. 1 Lakh, 7

State/ UT	Details of Loss or Injury	Maximum Limit of Compensation(Rs.)
Arunachal Pradesh <sup>16</sup>	Rape	50,000/-
	Rehabilitation	20,000/-
Assam <sup>17</sup>	Rape	75,000/-
	Rape of Minor/Gang Rape	1,00,000/-
Bihar <sup>18</sup>	Rape	50,000/-
Chhattisgarh <sup>19</sup>	Rape	25,000/-
Delhi <sup>20</sup>	Rape of Minor	50,000/-
	Rehabilitation	20,000/-
	Rape	5,00,000/-
	Gang Rape	7,00,000/-
Goa <sup>21</sup>	In case of injury causing, severe mental agony to women and child (e.g. in human trafficking and rape cases, Acid cases)	10,00,000/-

15. In Re: Indian Woman says gang-raped on orders of Village Court published in Business & Financial News, Suo Motu Writ Petition (Criminal) No. 24 of 2014 decided on 28 March, 2014.
16. Arunachal Pradesh Victim Compensation Scheme, 2011.
17. Assam Victim Compensation Scheme, 2012.
18. Bihar Victim compensation Scheme, 2011.
19. Chhattisgarh Victim Compensation Scheme, 2011.
20. Delhi Victims Compensation Scheme, 2011 has been repealed by the Delhi Victims Compensation Scheme, 2015.
21. Goa Victim Compensation Scheme, 2012.

Gujarat <sup>22</sup>	Rape	1,00,000/-
	Rehabilitation	50,000/-
Haryana <sup>23</sup>	Rape	3,00,000/-
Himachal Pradesh <sup>24</sup>	Rape	50,000/-
Jammu & Kashmir <sup>25</sup>	Rape	50,000/-
	Rape of minor or rape in police custody	1,00,000/-
Jharkhand <sup>26</sup>	Rape	20,000/-
	Rape of Minor	50,000/-
Karnataka <sup>27</sup>	Rape other than minor	1,50,000/-
	Rape of minor	3,00,000/-
Kerala <sup>28</sup>	Rape	3,00,000/-
	Rehabilitation	1,00,000/-
Madhya Pradesh <sup>29</sup>	Gang rape	3,00,000/-
	Sexual crime with minors	2,00,000/-
Maharashtra <sup>30</sup>	No amount for the offence of rape	Nil
Manipur <sup>31</sup>	Rape	20,000/-
	Rape of Minor	30,000/-
	Rehabilitation	20,000/-
Mizoram <sup>32</sup>	Rape	50,000/-
Nagaland <sup>33</sup>	Rape	50,000/-
	Rape of Minor	1,00,000/-
	Rehabilitation	50,000/-
Odisha <sup>34</sup>	No amount for the offence of rape	Nil

  

Punjab <sup>35</sup>	Rape	3,00,000/-
	Murder with rape	4,00,000/-
Rajasthan <sup>36</sup>	Rape	2,00,000/-
	Rape of Minor	3,00,000/-
	Rehabilitation	1,00,000/-
Sikkim <sup>37</sup>	Rape	50,000/-
	Rehabilitation	30,000/-

22. Gujarat Victim Compensation Scheme, 2013

23. Haryana Victim Compensation Scheme, 2013

24. Himachal Pradesh (Victim of Crime) Compensation Scheme, 2012

25. Jammu and Kashmir Victim Compensation Scheme, 2013

26. Jharkhand Victim Compensation Scheme, 2012

27. Karnataka Victim Compensation Scheme, 2011

28. Kerala Victim Compensation Scheme, 2014

29. Madhya Pradesh Crime Victim Compensation Scheme, 2015

30. Maharashtra Victim Compensation Scheme, 2014

31. Manipur Victim Compensation Scheme, 2011

32. Mizoram Victims of Crime Compensation Scheme, 2011

33. Nagaland Victim Compensation Scheme, 2012

34. Odisha Victim Compensation Scheme, 2012

35. Punjab Victim or their Dependents Compensation Scheme, 2011

36. Rajasthan Victim Compensation Scheme, 2011

37. Sikkim Compensation to Victims or his Dependents Schemes, 2011



Tamil Nadu <sup>38</sup>	Rape	3,00,000/-
Telangana <sup>39</sup>	Rape	2,00,000/-
Tripura <sup>40</sup>	Rape	The compensation shall be Rs.50,000/- of which Rs. 5,000/- shall be paid after preliminary verification of the complaint and the balance amount shall be sanctioned on filing of charge sheet.
Uttar Pradesh <sup>41</sup>	Rape	2,00,000/-
Uttarakhand <sup>42</sup>	Rape	2,00,000/-
	Rape of Minor	2,50,000/-
	Rehabilitation in case of rape victim	1,00,000/-
West Bengal <sup>43</sup>	Rape	20,000/-
	Rape of Minor	30,000/-
	Rehabilitation	20,000/-
UT of Chandigarh <sup>44</sup>	Rape	3,00,000/-
	Rehabilitation	20,000/-
UT of Dadra & Nagar Haveli <sup>45</sup>	Rape	3,00,000/-
	Rehabilitation	20,000/-
UT of Daman & Diu <sup>46</sup>	Rape	3,00,000/-
	Rehabilitation	20,000/-
UT of Puducherry <sup>47</sup>	Rape	3,00,000/-
	Rehabilitation	20,000/-

Lakhs and 3 lakhs respectively. In this respect, the verdict delivered by Hon'ble Supreme Court of India is significant where the court directed to all the States and Union Territories to make all endeavour to formulate a uniform scheme for providing

victim compensation in respect of rape/sexual exploitation.<sup>48</sup>

The second proviso attached with section 376D IPC mentions that any fine imposed under this section shall be paid

38. Tamil Nadu Victim Compensation Scheme, 2013

39. Telangana Victim Compensation Scheme, 2015

40. Tripura Victim Compensation Scheme, 2012

41. Uttar Pradesh Victim Compensation Scheme, 2014

42. Uttarakhand Victim from Crime Assistance Scheme, 2013

43. West Bengal Victim Compensation Scheme, 2012

44. Union Territory of Chandigarh Victim Assistance Scheme, 2012

45. Union Territory of Dadra & Nagar Haveli Victim Assistance Scheme, 2012

46. Union Territory of Daman & Diu Victim Assistance Scheme, 2012

47. Puducherry Victim Assistance Scheme, 2012

48. Tekan alias Tekram v. State of Madhya Pradesh, Criminal Appeal No. 884 of 2015 decided on February 11, 2016.



to the victim. Earlier, it was thought that the amount of fine, if any, given to the victim will be deducted from the amount of compensation under section 357A CrPC but this confusion has been removed from section 357B CrPC which says that the compensation payable by the State Government under section 357A shall be in addition to the payment of fine to the victim under section 326A or section 376D of the Indian Penal Code.

### Treatment of Victims

Section 357C in CrPC, inserted by 2013 amendment, mandates to every hospitals to provide immediately medical treatment to the victims of gang rape. Section 357C is as under:

357C. Treatment of victims.- All hospitals, public or private, whether run by the Central Government, the State Government, local bodies or any other person, shall immediately, provide the first-aid or medical treatment, free of cost, to the victims of any offence covered under section 326A, 376, 376A, 376B, 376C, 376D or section 376E of the Indian Penal Code, and shall immediately inform the police of such incident.

Hon'ble Supreme Court of India in *In Re: Indian Woman says gang-raped on orders of Village Court published in Business & Financial News*<sup>49</sup>, held that all hospitals, public or private, whether run by the Central Government, the State Government, local bodies or any other person, are statutorily obligated under Section 357C to provide the first-aid or medical treatment, free of cost,

to the victims of any offence covered under Sections 326A, 376, 376A, 376B, 376C, 376D or Section 376E of the IPC.

### CONCLUDING OBSERVATIONS

Despite being the unique creation of nature on this earth, the women are bound to face and suffer endless humiliations and wrongs in varieties of ways on the land where it is said that

“यत्र नार्यस्तु पूज्यन्ते रमन्ते तत्र देवताः।  
यत्रैतास्तु न पूज्यन्ते सर्वास्तत्राफलाः क्रियाः॥”

meaning 'where women are worshipped, there dwells the divinity and where they are dishonored, all action remains unfruitful'. The condition of women in India is pathetic. It is very well known fact that without women the humanity cannot exist so it is need of hour to understand that they can exist, survive and develop in an atmosphere where they are provided hygienic environment free from humiliations, offences etc. and for this, making them socially, politically, economically, culturally and educationally strong is must. Though, numerous laws have been made to protect and develop with vision of empowering them but the ground reality is not satisfactory. The male dominated society does not want to accept that women are also a human being having those all qualities and characteristics like men. The concept of women empowerment is not panacea rather it is an attempt to provide women a dignified life like their counterpart and it should be thought by us that 'empowering women is empowering next generation'.

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49. Suo Motu Writ Petition (Criminal) No. 24 of 2014 decided on 28 March, 2014



The offence of gang rape is black patch on the face of developed and modern society. Immediate attention of the whole community is required in this regard. Combining for the purpose of committing rape is disgusting and heinous. If anyone wants to combine, they may combine for the purposes which are required for national integrity, solidarity and development. Perhaps the cause for such activities is deteriorating the social values in our society where

the women are thought to be object.

The India Judiciary, being the guardian of the Constitution and protector of little man, has played crucial role but a lot is needed to be done and it is expected that 'a Judge must, therefore, take note of the common man's sense of justice and not merely be a slave of logic and the letter of the law' as held by Gujarat High Court in *S. D. Patel & others v. State of Gujarat & others*.<sup>50</sup>

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50. Special Civil Application No. 17826 of 2011 decided on February 4, 2016

